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012300Z Nov 05

C O N F I D E N T I A L SECTION 01 OF 03 TAIPEI 004423

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STATE FOR EAP/RSP/TC AND EB/CIP, STATE PASS AIT/W AND USTR,
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E.O. 12958: DECL: 10/31/2015

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SUBJECT: NATIONAL COMMUNICATIONS COMMISSION BILL PASSES,
NOW WHAT?

Classified By: Director Douglas Paal, reason 1.4 b/d

11. (C) Summary: A bill to create a National Communications Commission (NCC) was approved by Taiwan's Legislative Yuan (LY) on October 25. The bill establishes a two-step process to select 13 commissioners who will have oversight for Taiwan's telecommunications and broadcasting policy. What was originally intended to be an independent regulatory body is instead looking like a political battleground for control of the media. Intensive inter-party negotiations coordinated by LY Speaker Wang Jin-pyng were crucial to overcoming disagreements about the party affiliation of commissioners. Despite the negotiated settlement, the vote on this controversial provision was split firmly along party lines. Government threats to refer the bill to the Council of Grand Justices for a ruling on its constitutionality are unlikely to be carried out according to one ruling party lawmaker. If the law is promulgated as expected, the NCC could be operational before the end of 2005. Local observers fear political conflict among the NCC commissioners could prove detrimental to Taiwan's telecommunications industry. End summary.

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NCC Compromise Surprise
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12. (U) To the surprise of industry insiders and the media, the controversial bill establishing an NCC was passed by the LY, just days after the debate over how to select commissioners devolved into physical violence on the floor of the LY. The establishment of an independent media regulator was one of Taiwan's WTO accession commitments. The bill was originally proposed in 2003 and the law authorizing the establishment of an NCC was passed in December of that year. However, the organizational portion of the bill, especially the section dealing with the appointment of commissioners, proved much more controversial. Debate in May 2005 proved so contentious that the LY imposed a four month "cooling-off period" when the bill could not be discussed in the LY. Several days of inter-party meetings and hearings in October chaired by LY Speaker Wang and including non-government telecom and media organizations resulted in a compromise article that creates an LY appointed nominating committee and divides commissioner slots roughly along party lines.

13. (C) Under the new law, 15 candidates for commissioner will be nominated by the legislature, with the number nominated by each party determined by its proportion of seats in the LY (i.e., eight pan-blue and seven pan-green). The Executive Yuan will nominate three candidates for a total of eighteen. An eleven member review committee composed of "experts" nominated by the political parties in proportion to their strength in the legislature (i.e., the pan-blue parties will choose six and the pan-green will chose five) will then select 13 commissioners. A candidate will need to win the approval of 60% of the nominating committee in order to be selected. If fewer than 13 candidates reach this 60% threshold, those supported by a majority of the nominating committee will fill in the vacancies. Commissioners must not work for any government agency or state owned company and they are prohibited from simultaneously working for any communications or broadcasting company. Executive Yuan Secretary General Cho Jung-tai told AIT that the

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KMT-cotrolled review panel will likely approve all 8
KMT-nominated candidates, leaving just five seats for the 10
pan-green nominees.

14. (U) According to the new law, the LY caucuses will submit their lists of review committee members within ten days of the law's promulgation (required by Taiwan law 10 days after submission to the President's Office) and lists of commissioner candidates are due 15 days after promulgation. The review committee then has 20 days to submit its chosen list of commissioners to the EY. The Premier then must submit the list of names to the LY for confirmation within

seven days. If the bill is promulgated on schedule, the names should go to the LY by December 30. Upon their appointment, commissioners will choose one of their number to serve as Chairman and one to serve as Vice-Chairman. The Chairman and Vice-Chairman should not be nominated by the same political party.

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Wang works his LY
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15. (C) Wang's efforts were crucial to reaching an agreement that the pan-green parties could live with. Following fighting and bloodshed on the floor of the LY October 18, Wang held daily meetings between caucus leaders and key legislators from all parties that resulted in a process for selecting commissioners that both sides could accept, or at least would not again result in fisticuffs. The controversial provision was passed by the full LY by a vote of 112 to 98. The other provisions of the bill were not put to a direct vote but rather were passed by acclamation. Despite subsequent calls by the ruling Democratic People's Party (DPP) and the EY spokesman to refer the bill to the Council of Grand Justices for a ruling on its constitutionality, the bill would not have passed without the acquiescence of the ruling party. Taiwan Solidarity Union (TSU) lawmaker Ho Min-hao said the DPP and TSU decided to relent in their boycott of the offending clause because media organizations involved in licensing disputes will retain the right of appeal to the judiciary. Wang's willingness to allow media reform groups to present their views to LY committee-members also played well with the ruling party.

16. (C) According to DPP lawmaker Lee Wen-chung, the manner of the bill's passage may have been unusual, but he saw no threat to the constitutionality of the law. He was confident that the Executive Yuan would not refer the bill to the Grand Justices for their consideration, but acknowledged that internal differences within the DPP meant that there was still some debate about next steps. Lee said provisions requiring publication of the votes of the Commission contributed to the willingness of the pan-green parties to accept the passage of the bill. Lee also had praise for Wang's willingness to work with the DPP on this issue and to bring public advocacy groups into the process, noting that the series of meetings that led up to the passage of the bill was unusual. EY SecGen Cho confirmed that the government would not appeal this bill to the judiciary. Instead, it would open discussions with the opposition to reach agreement on how best to implement the bill's provisions.

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Industry Observers Hope for Best, Expect Worst
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17. (C) Industry insiders and analysts were surprised at the speed with which the NCC was finally passed. June Su, a telecom lawyer and co-chair of the American Chamber of Commerce's telecom committee questioned whether the politicized structure of the committee would allow the NCC to function as an independent regulator. She noted that the pan-blue parties had been concerned about their eroding influence over the media and their fear that new license applications would be dominated by pan-green supporters, but that the structure of the NCC eased these fears. In spite of the potential for political conflict, the NCC could be a boon for telecommunications policy, Su said, freeing the Directorate General of Telecommunications (DGT) from the control of the Ministry of Transportation and Communications (MOTC) and the domination of newly privatized Chunghwa Telecom (CHT). She suggested that having one agency in charge of both broadcast and telecom policy would push the convergence of media and telecommunications that industry insiders see as the future engine of growth for telecom providers.

17. (C) Jan Nilsson, President of Far East Tone (FET), one of the big three mobile operators in Taiwan, was pessimistic about whether the NCC could operate free of political interference. He said that FET had been holding off on making significant business plans because of the uncertainty surrounding the passage of the NCC and its eventual role as a regulator. Nilsson worried that the NCC would focus all of its attention on the perpetual controversies surrounding the broadcast media and would neglect telecom regulation. DGT is incapable of acting without orders from above, he said. In the absence of a commission that is actively engaged in telecom issues, DGT lacks the internal leadership necessary to create a telecommunications environment that will allow the market to remain at the forefront of innovation. He predicted political infighting and lack of sound policy would lead to stagnation in Taiwan's telecom market.

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Comment: Politics Likely to Trump Economics
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18. (C) The battle for control over the media is one of the most bitter conflicts in Taiwan politics today. The LY has created an NCC that is divided clearly along partisan lines and uses a formula that seems certain to give control of this executive branch commission to the pan-blue opposition for the next three years. Industry and policy watchers fear that the political battles that led to bloodshed in the LY will be continued in the NCC, leading to an uncertain and contentious regulatory environment that will discourage new investment and damage Taiwan's competitiveness in the telecommunications and broadcasting market. Telecom operators fear their issues will be subjugated to higher political profile broadcast policy questions. Cable operators are concerned that with the majority of NCC staff coming from DGT, broadcast policy development will favor telecom operators.

19. (C) The very different organizational cultures of the two bodies that will come together to staff the NCC, the Government Information Office (GIO) and DGT, are almost certain to result in inefficiency and confusion. But the establishment of the NCC could finally provide at least some measure of accountability to organizations that have been operating as lame ducks for the past 2 years. In the end, the NCC's role will be determined by the as yet unnamed commissioners. If they can minimize political conflict and establish clear rules for media and telecom operation the NCC could still be effective. If the body is paralyzed by political infighting, as appears likely, Taiwan's telecom and broadcast industries will suffer. End Comment.
PAAL